

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition of USTelecom for Forbearance</b>	)	<b>WC Docket No. 12-61</b>
<b>Under 47 USC §160(c) From Enforcement</b>	)	
<b>Of Certain Legacy Telecommunications</b>	)	
<b>Regulations</b>	)	

**COMPTTEL'S OPPOSITION TO USTELECOM'S PETITION FOR FORBEARANCE**

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## Table of Contents

	<u>Page</u>
Summary .....	ii
I. USTelecom Has Not Established That It Has Standing.....	2
II. The Statutory Standard .....	4
III. Forbearance From Section 214 and the Commission's Service Discontinuance Rules Should Be Denied .....	6
IV. Forbearance From the Network Change Notification Rules Should Be Denied .....	13
V. The Commission Should Deny Forbearance From The Open Network Architecture and Comparably Efficient Interconnection Requirements, The All-Carrier <i>Computer Inquiry</i> Rules and the Structural Separation Rule .....	17
VI. Any Forbearance From The Cost Assignment Rules For Additional Carriers Must Be Conditional .....	18
VII. The Commission Should Not Forbear From Enforcing The Part 32 Uniform System Of Accounts Rules .....	19
VIII. Any Forbearance From Filing ARMIS Report 43-01 For Additional Carriers Must Be Conditional .....	22
Conclusion .....	23

## **SUMMARY**

COMPTTEL opposes USTelecom's Petition for Forbearance. USTelecom seeks broad nationwide relief from various statutory and regulatory requirements either for all incumbent local exchange carriers ("ILECs") or for all incumbent price cap carriers to which they apply. The Commission should deny the Petition because USTelecom has not established that it has standing to request relief on behalf of all incumbent local exchange carriers ("ILECs") nor has it demonstrated that any of those ILECs lack market power in any or all of the markets in which they operate. At the very least, the Commission must deny USTelecom's Petition For Forbearance from the statutory and regulatory requirements in **Category 10** (Service Discontinuance Approval Requirements); **Category 9** (Rules Governing Notices of Network Changes); **Category 4** (Part 32 Uniform System of Accounts Rules); and **Category 2:** (Open Network Architecture and Comparably Efficient Interconnection Requirements, All-Carrier *Computer Inquiry* Rules and the Structural Separation Rule). Any forbearance granted in **Category 3** (Cost Assignment Rules) and **Category 7** (ARMIS Report 43-01) for additional price cap ILECs must be conditioned on the filing and approval of compliance plans by those ILECs.

As a preliminary matter, USTelecom has not established that it has standing to request forbearance relief on behalf of ILECs or all price cap ILECs. Section 10(c) of the Telecommunications Act, 47 U.S.C. §160(c), provides that any telecommunications carrier or class of carriers may file a petition asking the Commission to exercise its forbearance authority. USTelecom is not a telecommunications carrier, but rather a trade association whose members are telecommunications carriers. Even if its status as a membership association could qualify it

as a class of telecommunications carriers, USTelecom has not alleged that all of the ILECs on whose behalf it seeks relief are members.

If the Commission determines that USTelecom does have standing to request relief on behalf of all ILECs, which it should not do, its Petition must be denied. Section 1.54(b) of the Commission's Rules requires Petitioners to make a *prima facie* showing that forbearance is warranted under the exacting standards of Section 10. This USTelecom has failed to do. While USTelecom argues that the legacy telecommunications regulations from which it seeks forbearance serve no purpose in a broadband world and that consumers have access to a host of communications services from numerous sources rendering regulation unnecessary, the competitive analysis it submitted provides no data showing whether all or any of the ILECs have market power in any of their service areas, but instead presents aggregate national statistics. USTelecom's failure to present any evidence of the state of competition in any of the markets served by the ILECs on whose behalf it seeks relief makes it impossible for the Commission to perform the market power analysis required to determine whether competition is sufficient to grant forbearance.

The Commission should categorically deny USTelecom's request for forbearance from Section 214 of the Communications Act and the service discontinuance rules. Requiring prior Commission approval for a discontinuance of service is a means to protect against a carrier unreasonably terminating or reducing service to both wholesale and retail customers. USTelecom has not demonstrated that forbearance from enforcing these provisions will promote competition or the public interest and that it will not harm consumers. The same is true with respect to the Network Change Notification rules. Contrary to USTelecom's allegations, continued enforcement of the Commission's rules requiring an ILEC to provide carriers that are

directly interconnected with the ILEC timely notice of short term network changes and the opportunity to object remains necessary to protect consumers from possible service interruptions or outages.

The Commission must also deny USTelecom's request for forbearance from the Part 32 Uniform System of Accounts ("USOA") rules. When the Commission granted AT&T, Verizon and Qwest forbearance from the Cost Assignment Rules, those grants were conditioned upon the ILECs' agreements to maintain their Part 32 USOA accounting data and to make that data available to the Commission upon request. AT&T, Verizon and Qwest all filed compliance plans that were approved by the Commission prior to the forbearance becoming effective. Those compliance plans all reflect the ILECs' commitments to maintain the Part 32 accounting data and to make it available to the Commission on request. USTelecom's allegation that the Part 32 USOA accounting data are not necessary to ensure that ILECs' rates are just and reasonable and not unjustly or unreasonably discriminatory is directly contrary to the conclusion the Commission drew when it granted forbearance from the Cost Assignment Rules.

To the extent the Commission grants forbearance from the Cost Assignment Rules and the ARMIS Report No. 43-01 filing requirements to additional price cap ILECs, it should only do so subject to the same conditions imposed on AT&T, Verizon and Qwest when they were granted similar forbearance.

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**COMPTTEL’S OPPOSITION TO USTELECOM’S PETITION FOR FORBEARANCE**

COMPTTEL hereby opposes USTelecom’s Petition For Forbearance from certain legacy telecommunications regulations. USTelecom seeks broad nationwide relief from various statutory and regulatory requirements either for all incumbent local exchange carriers (“ILECs”) or for all incumbent price cap carriers to which they apply.<sup>1</sup> US Telecom has not demonstrated that all ILECs or all price cap ILECs are entitled to forbearance relief from the regulatory requirements at issue and its Petition should be denied. At the very least, the Commission must deny any forbearance relief in **Category 10** – Service Discontinuance Approval Requirements; **Category 9** – Rules Governing Notices of Network Changes; **Category 4** – Part 32 Uniform Systems of Account (“USOA”) rules; and **Category 2**: Open Network Architecture (“ONA”) and Comparably Efficient Interconnection (“CEI”) Requirements, All-Carrier *Computer Inquiry* Rules and the Structural Separation Rule. To the extent the Commission grants forbearance to additional price cap carriers from the rules in **Category 3** – Cost Assignment Rules and **Category 7** -- ARMIS Report 43-01, that forbearance must be conditional only consistent with similar grants of forbearance in the past.

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<sup>1</sup> See Appendix A to USTelecom’s Petition.

**I. USTelecom Has Not Established That It Has Standing**

Section 10(c) of the Telecommunications Act, 47 U.S.C. Section 160(c), limits on its face the parties that may request forbearance relief. Section 10(c) provides that any telecommunications carrier, or class of telecommunications carriers, may file a petition asking the Commission to exercise its forbearance authority. USTelecom is not a telecommunications carrier, thus calling into question its standing to request the forbearance relief that it seeks. USTelecom is a trade association whose members are telecommunications carriers. Even if its status as a membership association could qualify it as a “class of telecommunications carriers” entitled to seek forbearance relief, USTelecom asks for forbearance for *all* ILECs and/or *all* price cap ILECs.<sup>2</sup> It does not assert, however, that all ILECs or all price cap ILECs are in fact members of USTelecom. Because it has failed to establish that it has standing to request the relief that it seeks, the Commission should deny USTelecom’s Petition.

The Supreme Court has held that a trade association has standing to bring suit on behalf of its members when, among other things, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See, e.g., Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1997). That is not the case here. On the contrary, the participation of the individual ILECs is necessary to obtain the relief requested because the Commission needs to assess whether there is sufficient competition to warrant forbearance in any or all of the markets where the ILECs provide service. In analyzing requests for forbearance relief, the Commission has determined that it must define the relevant product and geographic markets and examine whether there are any carriers in those markets that,

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<sup>2</sup> *Id.*

individually or jointly, possess significant market power.<sup>3</sup> USTelecom has submitted no evidence that would allow such an analysis to be made.

While USTelecom has submitted what it labels a competitive analysis, the analysis is non-carrier specific and provides no data on the market share or market power held by any ILECs in any of the discrete markets in which they operate.<sup>4</sup> USTelecom alleges that “[i]n contrast to the monopoly-era voice market that existed when the legacy telecommunications regulations were adopted, the rapid deployment of broadband networks has given consumers access to a host of communications services from a variety of sources, including cable operators, wireless carriers and Voice over Internet Protocol (‘VoIP’) providers.”<sup>5</sup> The national aggregated data on which USTelecom relies to argue the existence of competition says nothing about the market share held by any of the ILECs on whose behalf it seeks relief or the existence of competitive alternatives in any of the markets that they serve. Without the participation of those ILECs or at least details about their market share in relevant product and geographic markets, the Commission cannot possibly determine whether any of them face competition from cable operators, wireless carriers, VoIP providers or other providers, and if they do face such competition, what the extent of that competition is.

USTelecom has failed to establish that it has standing to request forbearance relief on behalf of all incumbent LECs and for that reason its Petition should be denied.

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<sup>3</sup> *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113 at ¶12 (rel. June 22, 2010) (*Qwest Phoenix Decision*).

<sup>4</sup> USTelecom Petition at 4-5, 12-14, and Appendix B.

<sup>5</sup> USTelecom Petition at 4.



## II. The Statutory Standard

If the Commission determines that USTelecom does have standing to request relief on behalf of all ILECs whether or not they are members, which it should not do, it cannot find that USTelecom has met the statutory standard for forbearance relief from many of the regulations. USTelecom bears a heavy burden in proving that it meets the statutory prerequisites to obtain forbearance.<sup>6</sup> Section 10(a) of the Act, 47 U.S.C. §160(a), provides that the Commission may not grant forbearance from any provision of the Act or any Commission regulation unless and until it determines that three conditions have been satisfied. The Commission must make affirmative determinations that (1) enforcement of the provision or regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary for the protection of consumers; *and* (3) forbearance from applying the provision or regulation is consistent with the public interest.

In making the public interest determination, Section 10(b) requires the Commission to consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions and enhance competition among telecommunications providers. If the Commission determines that forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a finding that forbearance is in the public interest.

USTelecom has failed to make a *prima facie* showing that forbearance is warranted under each prong of this exacting statutory standard as required by Section 1.54(b) of the

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<sup>6</sup> *Qwest Phoenix Decision* at ¶14.

Commission's rules. USTelecom argues that the legacy regulations from which it seeks forbearance serve no purpose in a broadband world and that consumers today have "access to a host of communications services from a variety of sources, including cable operators, wireless carriers and Voice over Internet Protocol" providers, rendering regulation unnecessary.<sup>7</sup> As noted above, however, USTelecom provided no data showing the extent of competition faced by any of the ILECs on whose behalf it requests forbearance nor did it show the choices of providers available to consumers in any of the markets those ILECs serve. Without this basic data, the Commission cannot possibly perform the market power analysis required to identify whether competition is sufficient to constrain any of the incumbent carriers from acting in an anticompetitive manner in any of the geographic areas they serve.<sup>8</sup> For this reason, the Commission must deny USTelecom's forbearance petition.

Even if the Commission were to determine that certain of the regulations from which USTelecom seeks relief have outlived their usefulness, which it should not, it cannot possibly make that determination with respect to certain others, including Section 214 of the Act and the Commission's Service Discontinuance regulations, the rules governing Network Change Notifications, the Part 32 USOA rules, the ONA and CEI requirements, the All-Carrier *Computer Inquiry* Rules and the Structural Separation Rule. USTelecom has not come forward with reliable or verifiable evidence that would support a determination that forbearance from

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<sup>7</sup> USTelecom Petition at 4-5.

<sup>8</sup> *Qwest Phoenix Decision* at ¶38. See also, *In the Matter of Petition of AT&T for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 at ¶41 (rel. Oct. 12, 2007) (declining to extend forbearance relief to ILECs other than Petitioner because "record before us does not provide sufficient information regarding the nature and competitive conditions associated with particular enterprise broadband services currently offered by other incumbent LECs").

enforcing Section 214 of the Act or any of these other regulatory requirements is warranted for all ILECs.

The Commission has granted forbearance from the Cost Assignment rules and ARMIS Report 43-01 filing requirements for some of the larger price cap ILECs, but those grants were conditioned on the ILECs' compliance with certain prerequisites.<sup>9</sup> To the extent the Commission determines to extend similar forbearance to other price cap ILECs, it should only do so subject to the same conditions previously imposed.

### **III. Forbearance From Section 214 and the Commission's Service Discontinuance Rules Should Be Denied**

Section 214(a) of the Act provides that no telecommunications carrier shall discontinue, reduce or impair service to a community or part of a community without Commission approval based upon a determination that neither the present or future public interest, convenience and necessity will be adversely affected thereby. Notice must also be given to customers, the Secretary of Defense and the Governor of the state in which the carrier proposes to discontinue service and each of those must be given an opportunity to be heard.<sup>10</sup> The Commission's rules implementing these statutory provisions provide that dominant carriers must formally apply to the Commission for authority to discontinue telephone service to a community or part of a community as well as to sever a physical connection or to terminate or suspend the interchange of traffic with another carrier. See Sections 63.30, 63.61 and 63.62 of the Commission's Rules. In addition to notifying all affected customers in writing of the proposed discontinuance or

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<sup>9</sup> See e.g., *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rule*, WC Docket No. 07-21, Memorandum Opinion and Order, FCC 08-120 (rel. Apr. 24, 2008) ("AT&T Cost Assignment Order"); *In the Matter of Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c)*, WC Docket No. 07-204, Memorandum Opinion and Order, FCC 08-271 (rel. Dec. 12, 2008).

<sup>10</sup> Section 214(b).

termination of service, the ILEC must inform customers of their right to file an objection with the Commission within 30 days after the Commission releases a public notice of the proposed discontinuance. Customers must be advised that the Commission will normally authorize such discontinuances of service unless it is shown that they would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity would otherwise be adversely affected. See Section 63.71(a)(5), 63.71(c) of the Commission's Rules. The ILEC must also post public notice of the proposed discontinuance together with a statement that any member of the public may file a written protest with the Commission. Section 63.90(a)(8) of the Commission's Rules. Finally, Section 63.63 of the Commission's Rules requires a carrier to file an application for emergency authorization to discontinue or impair service due to conditions beyond the carrier's control.

USTelecom requests forbearance from these requirements to the extent they require a broadband provider to obtain Commission approval prior to discontinuing legacy offerings. "Specifically, USTelecom seeks forbearance of the Commission's service discontinuance approval requirements in an area where a carrier makes available IP broadband services (at least 4 Mbps download, 1 Mbps upload) and as a result of the availability of such new services, seeks to discontinue a preexisting service offering that relies on other technology."<sup>11</sup> USTelecom alleges that Commission approval is not necessary because customers will not be losing service but simply receiving service over a more advanced platform, *i.e.*, an IP network.<sup>12</sup>

USTelecom does not separately address each of the regulations from which it seeks forbearance or show how the statutory standard is met for each as required by Section 1.54(b)(1)

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<sup>11</sup> USTelecom Petition at 59.

<sup>12</sup> *Id.* at 60.

of the Commission's Rules. As demonstrated below, these shortcomings are fatal to the success of its Petition.

As an initial matter, USTelecom's request for relief goes beyond the discontinuance of service requirements that might be applicable when a broadband provider proposes to discontinue providing legacy offerings. For example, Section 63.63 covers emergency situations, not planned discontinuances. USTelecom does not address how forbearance from this rule will either protect consumers or serve the public interest. Because USTelecom has failed to demonstrate that the statutory standards for forbearance have been met for Section 63.63 of the Commission's Rules, the Commission must deny its request for forbearance.

Secondly, although USTelecom requests relief from the service discontinuance rules that would apply in both the wholesale and retail contexts, its Petition does not distinguish between the two and addresses only the potential impact that forbearance may have on retail customers. It does not reference the situation where an ILEC proposes to sever a connection or cease exchanging traffic with another telecommunications carrier. For this reason, the Commission should dismiss out of hand USTelecom's request for forbearance from Sections 63.62(b) and 63.71 of the Commission's rules. Those sections require Commission approval for the severance by a carrier of a physical connection with another carrier and the suspension of the exchange of traffic with another carrier.

Requiring prior Commission approval for a discontinuance of service is a means to protect against the unreasonable termination or reduction of service to customers.<sup>13</sup> If the Commission were to forbear from enforcing Section 63.62(b) and 63.71, ILECs would be able to terminate physical connections and traffic exchange arrangements with competitors for any

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<sup>13</sup> *In the Matter of the 2000 Biennial Regulatory Review*, IB Docket No. 00-231, Notice of Proposed Rulemaking, FCC 00-407 at ¶28 (rel. Nov. 30, 2000).

reason, including because of a billing dispute, with no Commission oversight. An ILEC's severance of a physical connection or the termination of traffic exchange with another carrier would cause irreparable harm to the other carrier and its customers because those customers would not be able to make calls to or receive calls from the ILEC's customers.<sup>14</sup>

Section 214(a) requires the Commission to certify that neither the present nor future public convenience and necessity will be adversely affected by any discontinuance, impairment or reduction in service. The Commission will normally authorize a proposed discontinuance, reduction or impairment of service unless it is shown that customers would not be able to receive service or a reasonable substitute from another carrier or that the public convenience or necessity is otherwise adversely affected.<sup>15</sup> Allowing a carrier that an ILEC proposes to disconnect the opportunity to make such a showing is critical for the protection of consumers and absolutely necessary for the promotion of competitive market conditions. USTelecom has not shown otherwise.

USTelecom alleges that customers will not lose service in the circumstances in which it seeks forbearance but instead will have service delivered over an IP network. It is unclear how or whether USTelecom intended for this rationale to apply in the carrier-to-carrier context. Two carriers that mutually agree to exchange traffic on an IP-to-IP basis or to substitute IP interconnections for legacy network interconnections would not need to get the Commission's prior approval. The three largest ILECs, however, have resisted IP interconnection with

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<sup>14</sup> See e.g., *In the Matter of Connect America Fund.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC -161 at ¶1336 (re. Nov. 18, 2011) ("*CAF Order*") (interconnection among communications networks is critical given the role of network effects – i.e., telephone service to an individual subscriber becomes more valuable to that subscriber as the number of other people he or she can reach using the telephone increases).

<sup>15</sup> See Section 63.71(a) of the Commission's Rules.

competitors and have vigorously argued to the Commission that any regulatory mandates relating to IP interconnection would be damaging, harmful to consumers and illegal. They further contend that IP interconnection should be accomplished only pursuant to unregulated commercial agreements.<sup>16</sup>

Given the ILECs' disinclination to interconnect with their competitors on an IP basis and their aggressive anti-regulatory posture toward IP interconnection, forbearance from Section 214 and the Commission's discontinuance rules would allow an ILEC unilaterally to sever a legacy network connection and to cease exchanging traffic with a competitive carrier because it has upgraded its network to IP.<sup>17</sup> Under no circumstances could such unilateral action by an ILEC not adversely affect the public the convenience and necessity. As the Commission recently noted in the *Connect America Fund Order*, an ILEC's ability to discontinue offering circuit-switched voice telephone service and instead offer only VoIP service would be contingent upon Commission approval based on a statement of the factors showing that neither the present nor future public convenience and necessity would be adversely affected.<sup>18</sup> USTelecom seeks to eliminate this regulatory safeguard without a statement of any factors showing that the public convenience and necessity would not be adversely affected. It would neither serve the public interest nor protect consumers to allow such disconnections of physical facilities to occur

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<sup>16</sup> See e.g., Comments of Verizon filed in WC Docket Nos. 10-90, *et al.*, at 9-39 (Feb. 24, 2012); Comments of AT&T filed in WC Docket Nos. 10-90, *et al.*, at 1-47 (Feb. 24, 2012); Comments of CenturyLink filed in WC Docket Nos. 10-90, *et al.*, at 36-50 (Feb. 24, 2012).

<sup>17</sup> See February 24, 2012 Comments of AT&T in WC Docket Nos. 10-90, *et al.* at 5 (the Commission should set a date for an official PSTN sunset after which any TDM networks would have no regulatory entitlement to interconnection). See also February 24, 2012 Comments of Verizon at 20 ("because of the wide availability of connection points and the Internet's architecture, there is little possibility that a network would be disconnected from the Internet, even if it were unable to reach agreement on interconnection terms with one or more networks").

<sup>18</sup> *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶1387 and n.2525 (rel. Nov. 18, 2011).

without Commission approval. The Commission should deny USTelecom's request for forbearance from enforcement of Sections 63.62(b) and 63.71 and continue to require approval of any ILEC severance of physical connections or suspensions/terminations of traffic with other carriers.

USTelecom's request for relief would also extend to TDM-based DS1 and DS3 special access services which many competitive carriers purchase as inputs for the services provided to their end users. In the *Qwest Phoenix Order*, the Commission denied Qwest's request for forbearance from Section 214 and the Commission's discontinuance rules in the absence of evidence of effective competition in the wholesale market.<sup>19</sup> The Commission must do the same here. USTelecom has made no showing of any ILEC's wholesale market share or of the availability of alternative facilities in any of the ILEC markets that competitive carriers may use to serve their customers in the event TDM special access facilities were withdrawn from the market.

The Commission should also deny USTelecom's request for forbearance from the discontinuance rules with respect to retail services. USTelecom erroneously asserts that broadband providers "are disadvantaged by having to wait weeks if not months before being able to introduce new services in place of their legacy offerings" and that "consumers are harmed by being unable to take advantage of new service offerings sooner rather than later."<sup>20</sup> Contrary to USTelecom's insinuation, neither Section 214 of the Act nor the Commission's discontinuance rules prevent or delay ILECs from introducing new broadband services or prevent or delay customers from taking advantage of such new offerings as soon as they are available. The

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<sup>19</sup> *Qwest Phoenix Order* at ¶¶63-78.

<sup>20</sup> USTelecom Petition at 61.



discontinuance rules have no impact on the timing of the introduction of new services or on customers who voluntarily choose to subscribe to an ILEC's broadband service offerings. The discontinuance rules would only come into play where an ILEC tells a customer who has chosen to retain his legacy telecommunications voice or DSL service that he must upgrade to a more expensive, higher speed 4 Mbps download, 1 Mbps upload broadband service or obtain service from another provider. Under these circumstances, forbearance is not warranted.<sup>21</sup>

In determining whether to allow a carrier to discontinue service pursuant to Section 214 of the Act, the Commission considers a number of factors in balancing the interests of the carrier and the affected customer community, including (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services.<sup>22</sup> In situations where all of an ILEC's customers have upgraded to broadband and no customers continue to subscribe to the legacy service,<sup>23</sup> there are unlikely to be objections and the balancing of these factors would clearly favor the ILEC that requests approval to discontinue offering the legacy service.

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<sup>21</sup> Of course, an ILEC would also have to file a Section 214 application if it decided to discontinue offering legacy circuit-switched services after all of its end users had upgraded to broadband service. It is unlikely that there would be any objections to such a discontinuance.

<sup>22</sup> *In the Matter of Verizon Telephone Companies Section 63.71 Application To Discontinue Expanded Interconnection Service Through Physical Colocation*, WC Docket No. 02-237, Order, FCC 03-256 at ¶8 (rel. Oct. 22, 2003).

<sup>23</sup> See e.g., Public Notice, Comments Invited on Application of AT&T Services, Inc. on Behalf of BellSouth Telecommunications, Inc.; Nevada Bell Telephone Company; Pacific Bell Telephone Company and Southwestern Bell Telephone Company To Discontinue Domestic Telecommunications Services, WC Docket No. 12-78, DA 12-508 (rel. Mar. 30, 2012) (proposing to discontinue offering a service "that utilizes outdated technology and has been replaced in the market by other data transport services such as DSL and IP-based services" and stating that no customers currently subscribe to the service).

Where an ILEC proposes to discontinue a legacy service to which customers still subscribe, however, those customers must not be deprived of the opportunity to demonstrate to the Commission, *inter alia*, that alternative facilities do not exist, are not available or are not adequate, and/or that the only alternatives that are available are considerably more expensive. In these circumstances, enforcement of the discontinuance rules is clearly necessary to protect consumers and forbearance would not be in the public interest. With no information about the extent of competition or the availability of alternatives in any of the ILECs' service territories, the Commission cannot possibly make a determination that competition in any one market or in all of the markets for which USTelecom seeks relief is meaningful and sufficient enough to warrant forbearance from the consumer protection discontinuance rules. Accordingly, the Commission should deny USTelecom's request for forbearance from enforcement of Section 214 of the Communications Act and the Commission's discontinuance rules.<sup>24</sup>

#### **IV. Forbearance from the Network Change Notification Rules Should Be Denied**

USTelecom seeks forbearance for all ILECs from Sections 51.329(a)(2), 51.329(c)(2) and 51.333(a)-(f) of the Commission's Rules which it claims require a redundant carrier-initiated filing and Wireline Competition Bureau-initiated public notice of short term network changes "when carriers post notice of the network change on their websites."<sup>25</sup> USTelecom's request should be denied because the Bureau's Public Notices of network changes provide critical information that is not included on the carriers' web postings of the network changes.

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<sup>24</sup> *Qwest Phoenix Order*, at ¶¶ 97-101 (failure to demonstrate that a market is effectively competitive deemed fatal to a forbearance request); *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212, at ¶¶33-34 and n. 107 (rel. Dec. 5, 2007) (same).

<sup>25</sup> USTelecom Petition at 56-59.

Section 51.329(a) of the Commission's Rules gives ILECs two options for providing public notice of network changes: they may either (1) file a public notice with the Commission or (2) post the notice in industry fora, including on their own publicly accessible websites. If the second option is selected, the ILEC must also file a certification with the Commission that identifies the proposed changes, states that public notice has been given in accordance with the Commission's Rules, and identifies the location of the change information and how it may be obtained. Section 51.329(a)(2)(i)-(iii) of the Commission's Rules. Section 51.329(c)(2) of the Commission's Rules requires ILECs to file two paper copies of their public notice or certification with the Commission.

Section 51.333(a) of the Commission's Rules requires an ILEC providing less than 6 months notice of planned network changes to include with its public notice or certification filed with the Commission a certificate of service that includes a statement that the ILEC served a copy of the notice on each telephone exchange service provider that directly interconnects with the ILEC's network and the name and address of each provider that was served. Section 51.333(b) provides that the Commission will release a Public Notice of filings of short term notices and notices of replacement of copper loops with fiber. Short term notices shall be deemed final on the tenth business day after the release of the Public Notice unless an objection is filed. Notices of replacement of copper loops or subloops shall be deemed approved on the 90<sup>th</sup> day after the release of the Public Notice unless an objection is filed. Section 51.333(c) provides that information service providers or telecommunications service providers that directly interconnect with the ILEC's network may file objections to the network change notice no later than nine days following the release of the Public Notice and Section 51.333(d) provides that the ILEC may respond to the objection no later than fourteen days following the Public Notice.

Section 51.333(e) gives the Wireline Bureau discretion to adjust the effective date of the network change implementation based on objections received. Section 51.333(f) provides that objections to the replacement of copper loops or subloops with fiber shall be deemed denied 90 days after the Commission's Public Notice unless the Commission rules otherwise. Copper loops and subloops may not be retired until the Commission has either ruled on the objection or the 90 days has passed.

USTelecom contends that these Commission rules are unnecessarily redundant when an ILEC posts notice of its proposed network change on its publicly accessible website.<sup>26</sup> COMPTTEL disagrees. Unlike the Public Notices issued by the Commission,<sup>27</sup> short term network change notifications posted on ILEC websites are abbreviated descriptions of the change and do not state that an information service provider or telecommunications service provider that directly interconnects with the ILEC's network may file an objection to the notice. Nor do the website notifications state when or how such objections must be filed or identify the location of information describing the proposed change.<sup>28</sup> To the extent that an ILEC's proposed network change will affect a competing provider's performance or ability to provide service, will affect the ILEC's interoperability with other service providers, or will result in the retirement of copper

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<sup>26</sup> USTelecom Petition at 57.

<sup>27</sup> See e.g., Public Notice, Wireline Competition Bureau Short Term Network Change Notification Filed By AT&T Southwest, Report No. NCD-2073 (Dec. 7, 2011); Public Notice, Wireline Competition Bureau Short Term Network Change Notification Filed By CenturyLink, Report No. NCD-2017 (Sept. 13, 2011); Public Notice, Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon North LLC, Report No. NCD-2096 (Dec. 23, 2011).

<sup>28</sup> See e.g., Verizon's Short Term Network Change Notifications posted at [http://www22.verizon.com/regulatory/reg\\_ntw\\_dscl2011.html](http://www22.verizon.com/regulatory/reg_ntw_dscl2011.html); CenturyLink Short Term Network Change Notifications posted at <http://www.centurylink.com/wholesale/networkdisclosures.html>; and AT& Short Term Network Change Notifications posted at <https://ebiznet.att.com/networkreg/>.

loops or subloops and the replacement of those loops with fiber,<sup>29</sup> ensuring that all affected interconnected carriers and ISPs receive timely notice not only of the change, but also of the opportunity to object to the change, is absolutely necessary to protect consumers from possible service interruptions or outages. USTelecom has not shown otherwise.

USTelecom does not appear to object to the requirement that ILECs serve notice of network changes on each ISP and carrier that directly interconnects with the ILECs' networks.<sup>30</sup> Instead, what it seeks forbearance from is the requirement that ILECs file a certificate of service with the Commission.<sup>31</sup> If in fact, ILECs do "individually serve[] the appropriate interconnecting service providers" with notices of network changes, as USTelecom alleges,<sup>32</sup> filing a certificate of service with the Commission should not be a heavy lift or hamper the ILECs' "ability to respond to consumer demands and competitive circumstances."<sup>33</sup>

USTelecom's request for forbearance from the requirement that interconnecting ISPs and carriers be given the opportunity to object to an ILEC network change or the timing of the change<sup>34</sup> is troubling to say the least. Insulating proposed network changes that will affect an interconnecting provider's performance or ability to provide service from objection should be a non-starter. The rules require objectors to provide specific reasons why they cannot accommodate the ILEC's network changes by the date stated in the notice and to list the steps

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<sup>29</sup> See Section 51.325 of the Commission's rules listing the circumstances in which network change notifications must be filed.

<sup>30</sup> USTelecom Petition at 57-58.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 58.

<sup>34</sup> *Id.*

they are taking to accommodate the changes on an expedited basis.<sup>35</sup> Objectors are also required to submit affidavits stating under oath and under penalty of perjury that their objections are not interposed for purposes of delay.<sup>36</sup> USTelecom's contention that providing interconnecting carriers with the opportunity to object to network changes only delays the ability of ILECs to make changes to their networks may in some circumstances be true, but a slight delay in implementing a network change is a small price to pay for maintaining ubiquitous connectivity and uninterrupted service.

USTelecom also complains that there is often a delay between the date an ILEC files a network change notification and the date the Wireline Bureau releases a Public Notice announcing the change, which in turn delays the implementation of the network change.<sup>37</sup> Even if USTelecom is correct, bureaucratic delay in issuing Public Notices does not provide a statutory basis for forbearance from enforcement of Sections 51.329 and 51.333 of the Commission's Rules. USTelecom has not shown that forbearance from enforcement of the network change notification rules will protect consumers, promote competitive market conditions or enhance competition among telecommunications providers. In fact, forbearance would do the opposite. USTelecom's request should be denied.

**V. The Commission Should Deny Forbearance From The Open Network Architecture and Comparably Efficient Interconnection Requirements, The All-Carrier Computer Inquiry Rules and the Structural Separation Rule**

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USTelecom asks for forbearance on behalf of the Bell Operating Companies ("BOCs") from the ONA and CEI requirements and Section 64.702 of the Commission's Rules, the

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<sup>35</sup> Section 51.333(c).

<sup>36</sup> Section 51.333(c)(5).

<sup>37</sup> USTelecom Petition at 58.

structural separation rule. It also requests forbearance on behalf of all covered carriers from the “All-Carrier” *Computer Inquiry* Rule.<sup>38</sup> These requirements and rules were adopted by the Commission to prevent the BOCs and other ILECs from using their exclusionary market power to impede competition in the information services market.<sup>39</sup> USTelecom has failed to demonstrate that the ILECs no longer possess exclusionary market power in any or all of their service territories, so the Commission must assume that they do and that their exercise of such market power could lead to rates, terms and conditions that are unjust, unreasonable and unjustly and unreasonably discriminatory.<sup>40</sup> For this reason, the Commission must deny USTelecom’s request for forbearance from Section 64.702 of the Commission’s Rules, the All-Carrier Rule and the ONA and CEI requirements.<sup>41</sup>

**VI. Any Forbearance From The Cost Assignment Rules  
For Additional Carriers Must Be Conditional**

USTelecom requests forbearance from the Cost Assignment Rules for all price cap carriers that have not already received forbearance.<sup>42</sup> When the Commission granted AT&T forbearance from the Cost Assignment Rules, it conditioned the grant, *inter alia*, on AT&T’s agreement to maintain its Part 32 USOA books of account and on the provision by AT&T of USOA accounting data to the Commission on request. AT&T was also required to submit for

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<sup>38</sup> USTelecom Petition at 24-31.

<sup>39</sup> *In the Matter of Computer III Further Remand Proceedings*, 14 FCC Rcd 4289 (1999); *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations*, 77 FCC 2d 384 (1980).

<sup>40</sup> *Qwest Phoenix Order* at ¶¶119-120 (Qwest’s failure to show that it no longer had market power in Phoenix served as the basis for denial of forbearance from *Computer III* requirements).

<sup>41</sup> *Id.*

<sup>42</sup> USTelecom Petition at 31-34.

approval to the Commission a compliance plan describing in detail how it will continue to fulfill its statutory and regulatory obligations.<sup>43</sup> The same conditions were imposed on Verizon and Qwest when they were granted forbearance from the Cost Assignment Rules.<sup>44</sup> To the extent that the Commission grants forbearance from the Cost Assignment Rules to other price cap carriers, it must impose the same conditions that were imposed on AT&T, Verizon and Qwest, including the requirement that they maintain their Part 32 USOA accounting data and the requirement that they submit compliance plans to the Commission for approval before the forbearance becomes effective.

## **VII. The Commission Should Not Forbear From Enforcing the Part 32 Uniform System of Accounts Rules**

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USTelecom also seeks forbearance from the part 32 Uniform System of Accounts Rules for all price cap carriers.<sup>45</sup> As noted above, the Commission conditioned forbearance from the Cost Assignment Rules on the agreement by AT&T to continue to maintain its USOA books of account as required by Part 32 of the Commission's Rules and the submission and approval of a compliance plan.<sup>46</sup> When the Commission subsequently granted Verizon and Qwest forbearance from the Cost Assignment Rules, it also conditioned those grants on the carriers' agreements to

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<sup>43</sup> *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21, Memorandum Opinion and Order, FCC 08-120 at ¶¶21, 31 (rel. Apr. 24, 2008) ("*AT&T Cost Assignment Order*").

<sup>44</sup> *In the Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, at ¶¶27-28 and n. 82 (rel. Sept. 6, 2008).

<sup>45</sup> USTelecom Petition at 34-42.

<sup>46</sup> *AT&T Cost Assignment Order* at ¶¶12, 21, 23, 31, 41.



continue to maintain their USOA books of account and the approval of compliance plans.<sup>47</sup> The Compliance Plans filed by all three carriers contain commitments to maintain their USOA books of account.<sup>48</sup> Thus, USTelecom's contention that the Commission did not specifically require that the Compliance Plans include Part 32 USOA data<sup>49</sup> rings hollow.

USTelecom's arguments that the Part 32 USOA data is unnecessary to ensure that price cap carriers' rates are just and reasonable and not unjustly or unreasonably discriminatory, to protect consumers or to serve the public interest are unpersuasive. In granting AT&T forbearance from the Cost Accounting Rules, the Commission stated that it needs accounting tools to accomplish its statutory responsibility to ensure that rates are just, reasonable and not unjustly or unreasonably discriminatory. It further noted that it could only conclude that the Section 10 forbearance criteria were met for the Cost Assignment Rules because of the conditions imposed on the forbearance grant "that mitigate factors that could otherwise lead us to conclude that the Cost Accounting rules remain necessary under Section 10."<sup>50</sup> One of those conditions was that AT&T would continue to maintain its USOA accounting data and would

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<sup>47</sup> *In the Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203 at ¶¶27-28 and n. 82 (rel. Sept. 6, 2008).

<sup>48</sup> AT&T Cost Assignment Forbearance Order Compliance Plan filed in WC Docket Nos. 07-21 and 05-342 on July 24, 2008 at 11-12 (AT&T will continue to maintain its USOA books of account and will provide timely and useable information to the Commission on request); Verizon Cost Assignment Forbearance Compliance Plan filed in WC Docket No. 07-21 on September 19, 2008 at 3 (Verizon will continue to maintain its books in accordance with the Part 32 USOA requirements and the accounting data will continue to be available to the Commission on request); Qwest Corporation Compliance Plan filed in WC Docket No. 07-21 on September 24, 2008 at 3-4 (Qwest will continue to maintain its books in accordance with the Part 32 USOA rules and will provide useable and timely accounting information to the Commission on request).

<sup>49</sup> USTelecom Petition at 37.

<sup>50</sup> *AT&T Cost Assignment Order* at ¶21.

make that data available to the Commission upon request for regulatory purposes, including rulemakings and adjudications.<sup>51</sup>

USTelecom has not shown how the Commission could accomplish its statutory duty to ensure that rates are just, reasonable and not unjustly or unreasonably discriminatory without access on demand to the ILECs' USOA accounting data. Although USTelecom contends that "continued regulation of a price cap carrier's rates will adequately 'protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classifications and regulations,'"<sup>52</sup> it omits a very significant limitation on the validity of that statement. What USTelecom fails to mention is that price cap carriers are not subject to price cap regulation for services and in markets for which they have been granted Phase II pricing flexibility.<sup>53</sup> Thus, USTelecom's rationale for forbearance from the Part 32 USOA rules does not hold water. Moreover, one of the issues yet to be resolved in the special access proceeding is whether the Commission's pricing flexibility rules are working as intended and as the Commission predicted they would.<sup>54</sup> The Part 32 USOA accounts provide useful revenue and expense information relating to the price cap carriers' special access services and must remain available to the Commission in order for it to accomplish its statutory responsibilities. USTelecom has not shown otherwise.

Just three months ago, the Wireline Competition Bureau staff rejected AT&T's, Verizon's and Qwest's arguments that a number of the Part 32 rules should be eliminated and

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<sup>51</sup> *AT&T Cost Assignment Order* at ¶¶21, 45.

<sup>52</sup> USTelecom Petition at 38.

<sup>53</sup> *AT&T Cost Assignment Order* at n. 50.

<sup>54</sup> See e.g., Public Notice, Competition Data Request in *Special Access* NPRM, WC Docket No. 05-25, DA-1576 at 1 (rel. Sept. 19, 2011).

concluded that the Part 32 rules remain necessary in the public interest.<sup>55</sup> The Commission should reach the same result with respect to the entirety of the Part 32 rules from which USTelecom seeks forbearance.

### **VIII. Any Forbearance From Filing ARMIS Report 43-01 For Additional Carriers Must Be Conditional**

Four years ago, the Commission granted AT&T, Verizon and Qwest forbearance from filing ARMIS Report 43-01 after finding that because their rates are regulated under price caps, rather than rate of return regulation, the report was no longer necessary in determining whether their rates are just, reasonable and not unjustly or unreasonably discriminatory. That forbearance was conditioned upon (1) Commission approval of compliance plans filed by the carriers demonstrating how they will continue to fulfill their statutory and regulatory obligations and (2) the carriers' continuing obligation to file annually with the Commission the pole attachment cost data submitted in ARMIS Report 43-01 without assertions of confidentiality.<sup>56</sup>

USTelecom asks for forbearance relief for all covered carriers, not just price cap carriers.<sup>57</sup> Such relief is not warranted. To the extent the Commission is inclined to grant forbearance from filing ARMIS Report 43-01 to additional carriers, it must limit that relief to price cap carriers and require those carriers to submit compliance plans to the Commission for

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<sup>55</sup> Public Notice, Commission 2010 Biennial Review of Telecommunications Regulations, CG Docket No. 10-266, *et al.*, DA11-2050 at 4-5 (rel. Dec. 23, 2011).

<sup>56</sup> *In the Matter of Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c)*, WC Docket No. 07-204, Memorandum Opinion and Order, FCC 08-271 at ¶¶10, 12, 13 (rel. Dec. 12, 2008) ("*Qwest ARMIS Order*").

<sup>57</sup> USTelecom Petition at A-10.

approval. Forbearance must also be conditioned on the requirement that those carriers file pole attachment cost data annually with the Commission without assertions of confidentiality.<sup>58</sup>

### **Conclusion**

For the foregoing reasons, the Commission should conclude that USTelecom lacks standing to request forbearance on behalf of all ILECs and all price cap ILECs and that it has failed to make a *prima facie* showing that forbearance is warranted. At the very least, the Commission must deny USTelecom's Petition for Forbearance from the Service Discontinuance Approval Rules, the Rules Governing Notices of Network Changes, the Part 32 USOA Rules, the ONA and CEI Requirements, the Structural Separation Rule and the All-Carrier *Computer Inquiry* Rule. Any forbearance granted from the Cost Assignment Rules and from filing ARMIS Report 43-01 to additional price cap carriers must be conditional.

Respectfully submitted,

/s/

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<sup>58</sup> *Qwest ARMIS Order*.